

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

Bail Appl..No. 4340 of 2007()

CC.163/2007 of J.M.F.C.-I, KOLLAM
CRIME NO.398 OF 2006 OF ANCHALLUMOODU POLICE STATION
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: PETITIONERS/ACCUSED

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1. SURESH KUMAR, AGED 40, S/O. GOPINATHAN
ASAN, SATGAMAYA HOUSE, NEAR THUMPARA TEMPLE,
MUNDACKAL, KOLLAM.
 2. SUNETH, AGED 34, S/O. NATARAJAN,
SOBHANA BHAVAN, NEAR DALAVAPURAM BRIDGE,
DALAVAPURAM WARD, DALAVAPURAM.
 3. THULASI, W/O. LATE CHITRABHANU,
VARAMBEL HOUSE, NEERAVIL, PERINADU.
 4. LOVELY, W/O. SURESH KUMAR, AGED 40,
S/O. GOPINATHAN ASAN, SATGAMAYA HOUSE,
NEAR THUMPARA TEMPLE, MUNDACKAL, KOLLAM.
 5. ANCY, W/O. SUNETH, AGED 34,
S/O. NATARAJAN, SOBHANA BHAVAN, NEAR DALAVAPURAM
BRIDGE, DALAVAPURAM WARD, DALAVAPURAM.

BY ADV. SRI.V.V.RAJA
SRI.M.T.SURESHKUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, THROUGH THE
SUB INSPECTOR OF POLICE, ANCHALLUMOODU,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.RAVEENDRA BABU

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

B.A.No.4340 of 2007

Dated this the 18th day of July, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 to 5. They face allegations, inter alia, under Section 452 & 326 read with 149 I.P.C. Accused 4 and 5 are sisters. Accused No.3 is their mother. Accused 1 and 2 are the husbands of accused 4 & 5. The crux of the allegations is that the defacto complainant, who is the husband of the elder sister of accused 4 and 5 was attacked by an unlawful assembly of persons including accused 1 and 2 when he had retired for the day in a room in the house of accused No.3. Using dangerous weapons, grievous hurt was inflicted on him by an unlawful assembly of persons including accused 1 and 2. Investigation was conducted. Final report was filed arraying petitioners 1 and 2 as accused. Eight other unidentified accused were also shown as accused. Cognizance was taken. Accused 1 and 2 were not available for arrest during the investigation of that crime. Subsequent to the filing of the final report also, they have not appeared before the learned Magistrate so far. It is submitted that summons has been issued to them and they had been directed to appear on 26.12.2007.

2. There was some applications filed before the superior authorities demanding further investigation and a further

investigation has now been ordered, it is submitted. Subsequently petitioners 3 to 5/accused 3 to 5 have also been arrayed as accused. Investigation is in progress. The petitioners apprehend imminent arrest.

3. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. At any rate, a reading of the F.I statement must convince the Court that the allegations against accused 3 to 5 are now being raised without any justification. It is submitted that in these circumstances, all the petitioners are entitled to directions under Section 438 Cr.P.C.

4. The learned Public Prosecutor opposes the application in so far as accused 1 and 2 are concerned. The learned Public Prosecutor does not oppose the application for anticipatory bail of accused 3 to 5.

5. Having considered all the relevant inputs, I am satisfied that appropriate direction under Section 438 Cr.P.C can be issued in favour of the petitioners.

6. In the result, the Bail Application is, allowed in part. The following directions are issued under Section 438 Cr.P.C.

i) All the petitioners shall appear before the learned Magistrate at 11 a.m on 25.07.2007. Petitioners 3, 4 & 5 shall be enlarged on regular bail on their executing a bond for Rs.25,000/-

(Rupees Twenty Five thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) Petitioners 3 to 5 shall make themselves available for interrogation before the Investigating Officer between 10 a.m and 1 p.m on 26.07.2007 and 27.07.07 and thereafter as and when directed by the Investigating Officer in writing to do so;

iii) Petitioners 1 and 2 shall apply for regular bail on their surrender before the learned Magistrate on 25.07.07. The learned Magistrate shall consider such application on merits, in accordance with law and expeditiously - on the date of surrender itself-unless compelling and exceptional reasons are there. Notice of such application for bail shall be given to the learned Prosecutor prior to their surrender. The prosecution/police shall also be entitled to make appropriate application for custody etc. if such custody be necessary. Such application shall also be disposed of on the date of surrender itself.

iv) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if those directions were not issued at all;

v) If the petitioners were arrested prior to their surrender on 25.07.07 as directed in clause (1) above, they shall be released on their executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) without any sureties undertaking to appear before the learned Magistrate on 25.07.07

(R.BASANT, JUDGE)

rtr/-